he can supply manure in the land and increase the yield of the tree. This Oodukur arrangement is a disease which ought to be cured as quickly as possible. I thank the Government for bringing this demand even at this stage and I would entreat every one here to help to remedy this evil as early as possible. I support the demand.

The demand was then put to vote and carried.

The grant was made.

ADMINISTRATION OF JUSTICE.

Mr. Kayalam Paramesvaran Pillai: Sir, I beg to move for a grant of Rs. 61,430 under "Administration of justice". As may be seen from the printed demand paper before the honourable members, this demand is made under three distinct items. The first item is for a grant of Rs. 5,180 for payment of fees to the special prosecutor appointed for the conduct of the Alleppey riot cases. Honourable members are aware that very recently there was a very serious riot in Alleppey in which a large number of people was involved. It was found that having regard to the complicated nature of the case, the long list of witnesses and the large number of accused persons, it would require careful study and scrutiny by an experienced lawyer for a considerable time. It was decided to appoint a special lawyer.

Mr. Nedumangad R. Kesavan Nair: May I know who found it?

Mr. Kayalam Paramesvaran Pillai: Government found it.

Besides, the same lawyer was engaged by the Government to assist the Advocate General when the case came up to the High Court in appeal. For these two together a demand of Rs. 5,180 is made.

The second item is for the salary of Government Pleaders. Honourable members are aware that recently a G. O. was issued according to which the terms and tenure of the Government Pleaders were revised. Under this G. O. the Government Pleaders who work in the High Court are to be paid Rs. 500 a month and the District Court Government Pleaders are to be paid Rs. 400 and the Assistant Additional District Court Pleaders are to be paid Rs. 350. For this purpose a sum of Rs. 11,250 is required.

The third item relates to the continuance of the five temporary Second Judges' Courts and the five temporary Munsiffs' Courts with the temporary staff attached thereto. For this purpose a sum of Rs. 45,000 is required. It was expected, when the budget was prepared, that when the Conciliation Boards are established there

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[Mr. Kayalam Parameswaran Pillai.]

will be a considerable reduction in the institution of suits in the District and Munsiffs' Courts. But as a matter of fact there is not a considerable reduction. Therefore, it has now become necessary that these courts should continue. For this purpose this amount is required. I trust the House will grant it also.

Mr. Padiyara Joseph Kunju : ആലപ്പുഴ കേസിലേയ്ക്ക വക്കീലിനെ നിയമിച്ചതു് എന്നാണു്?

Mr. Kayalam Parameswaran Pillai: The Government order was passed on the 22nd August 1937.

Mr. Padiyara Joseph Kunju : അതു കഴിഞ്ഞയാണ്ടത്തെ ബഡ്ജറ്റു തയാറാക്കുന്നതിനു മുൻപല്ലെ?

Mr. Kayalam Parameswaran Pillai: The budget was prepared some time before the end of the year. When the budget was prepared the order had not been passed.

Mr. K. R. Elenkath: May I ask whether it is because there was no competent Government pleader that this man was appointed ?

Mr. Kayalam Parameswaran Pillai: No. He was appointed because it was a complicated case. It meant no reflection on anybody.

Mr. Nedumangad R. Kesavan Nair: May I ask Sir, whether the House will be permitted to vote on these three items separately ?

President: I am prefectly willing to do so.

Mr. Nedumangad R. Kesavan Nair: In that case, I wish to make a few remarks on the first item, *viz.*, payment of fees to the special prosecutor. I oppose it just to express my disapprobation of the principle underlying the appointment of a special prosecutor. I just now asked the Law Member as to who made that appointment. The Law Member replied that it was Government. We want more information on the matter. Ordinarily there is a machinery to look after the conduct of public prosecutions in the State—I mean the Department of the Head Sirkar Vakil, whose name has recently been changed into Advocate General, and his staff. During last Karkadakam, we made provision for Rs. one lakh and odd for the maintenance of the Head Sirkar Vakil and his staff. We are having an Advocate General on Rs. 900, a Law Member for the same amount, two Assistant Head Sirkar Vakils, six District Court Sirkar Vakils, four temporary Sirkar Vakils and one temporary Assistant Sirkar Vakil. On the whole we pay for this staff Rs. 58,000 per annum. A perusal of the budget would show that over and above this amount there is

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provision for "fees to Vakils"and Rs. 4,000 is set apart, and for law charges another Rs. 4,000 is provided. Obviously these fees to Vakils are meant for the appointment of special Vakils in cases of emergency. So far as this particular appointment is concerned, I would invoke the House to insist on knowing the full details that necessitated the appointment of a special prosecutor. Did the Head Sirkar Vakil say that the local Sirkar Vakil reported that he is not competent to conduct the prosecution? No doubt, it is a case in which 80 witnesses were examined and over 200 exhibits were filed. I am aware that it is a trial that lasted for four months. But I would request the House to enlighten us—

President: I do not think the House can enlighten the honourable member.

Mr. Nedumangad R. Kesavan Nair: I intended to say that the House should insist on the Government to enlighten us further in this matter. To continue Sir, we can understand another contingency. Probably in certain cases the Police might think that a special prosecutor under exceptional circumstances has to be appointed. Has any request proceeded from the Police Inspector, the D. S P. or the Police Commissioner? Or, is it that the appointment was made by the Government on their own motion? Sir, it was only very recently that for a sensational case a Government pleader was deputed—I mean the Kottayam draft case for which Mr. N. K. Narayana Pillai was deputed and in his place my learned friend Mr. Simon, a member of this House, was appointed. Nothing precludes Government from deputing a special Sirkar Vakil from among the staff of the Advocate General. Moreover, the appointment of a special prosecutor from among the Vakils means discredit to the department. It means that the Sirkar Vakils are incompetent to conduct certain cases and that Government have no confidence in their ability. If a Sirkar Vakil was appointed from among the Government Advocates he would not have been so insistent on protracting this case. My information is that the special prosecutor was paid at the rate of Rs. 50 per diem for the trial which lasted for four months. The trial began on the 18th Chingom and concluded on the 22nd Vrischikam 1112. 82 witnesses were examined. But that does not mean that all the evidence that was given was necessary. For, even with this indispensable special prosecutor, let us see what the honourable High Court has said about the conduct of the case.

> "The learned Sessions Judge has devoted considerable labour and industry in the preparation of his judgment. I regret, however, to observe that he has admitted a mass of irrelevant evidence in the case on matters with which the Court had no concern whatever. The opinion held by Mr. K. C. Karunakaran about the Commissioner of Police and the observations made against Mr. Karunakaran by the Commissioner of Police were altogether irrelevant for the purpose of this case". (12 T. L. T. 411.)

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[Mr. Nedumangad R. Kesavan Nair.]

It will be found that certain superficial matters touching the integrity or honesty of the head of a department were given in reply to a question that was persisted in by the special Sirkar Vakil who was appointed at Government cost, for whom we are now asked to vote Rs. 5,180.

President : Is that passage not a reflection on the judge?

Mr. Nedumangad R. Kesavan Nair : On the judge and the vakil. That question, about which the High Court have opined, was put by the special prosecutor to Mr. Karunakaran. Mr. Karunakaran expressed some delicacy to answer that question. But the question was persisted upon by the special prosecutor.

Mr. Kochikal P. Balakrishnan Tampi : What is the source of the member's information ?

Mr. Nedumangad R. Kesavan Nair : I am reading from an attested copy.

Mr. Kochikal P. Balakrishnan Tampi : That portion may be read.

President : I think the honourable member is quite in order in conducting this inquest upon the trial, but he will be brief. I am quite willing to allow the honourable member to enlighten the House but if he will read all the depositions it will take a long time.

Mr. Nedumangad R. Kesavan Nair : In fact, I would not have referred to it at all had not Mr. Tampi asked for it.

President : But in the same way as you are courteous to the honourable member, you must be courteous to the House also.

Mr. Nedumangad R. Kesavan Nair : I will be and I may inform you, Sir, that I am very solicitous of the time of the House.

President : I am very much assured by the reply.

Mr. Nedumangad R. Kesavan Nair : In the chief examination of a Prosecution witness it is presumed that the special prosecutor examines the witness in chief. One question in chief examination that was asked was "why did you not send a telegram that day to the Police Commissioner".

That was a question put to the witness and he was made to say a lot of things highly unnecessary and beside the point and so much of dirty linen is sought to be washed.

President : I presume there was a judge sitting in the bench.

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Mr. Nedumangad R. Kesavan Nair: I am aware of tbat, Sir. The Public Prosecutor was not properly dealt with by this judge. He should not have insisted on getting answers on such an irrelevant question. My complaint is with regard to the Public Prosecutor alone. I have no quarrel with the judge nor is it my concern to look after the conduct of the judge In a matter of this kind, I want to see that the Public Prosecutor justifies his appointment since we are to vote for a grant that is to be given to him. It is clearly a case where he has not justified the choice.

President: Of course, in the enthusiasm of the lawyer there might have been something ridiculous or extravagant in the conduct of the case. But to blame a lawyer for overdoing his duty, when it was the duty of the judge to see to it, I think, is not taking a just view of the situation.

Mr. Nedumangad R. Kesavan Nair: I was just adverting to the justifiability in adducing evidence which was found by the High Court to be irrelevant. The Sirkar Vakils are ignored and a special public prosecutor is appointed on the assumption that he is more efficient. Provision for a very fabulous amount to a special prosecutor is made on the equal assumption that he is competent to make a distinction between relevant and irrelevant evidence at least. Regarding this particular portion about which much comment has been made, it will be seen that Mr. Karunakaran's evidence was allowed to come in not with very good motives. So we see that much of unnecessary matter was brought in the judgment of the trial court primarily because of the special prosecutor. I am against this policy of Government making such appointments in utter disregard of existing Sirkar Vakils and without consulting persons who are more conversant about prosecutions like the Head Sirkar Vakil. Ordinary people and also lawyers understand that in the matter of conducting prosecutions it is the concern of the Advocate General. So far as public tranquillity is concerned, it is his foremost duty and right to make suggestions to Government. We could have also understood if Government had proceeded on the recommendation of the Police Commissioner. If Government had made such an appointment on their own initiative it is highly irregular and on this ground this demand has to be thrown out.

Another point is that if that special prosecutor is so unavoidable, why not he be appointed as a permenant public prosecutor under Government on any pay that Government may be pleased to give? In this particular case I am of opinion that Government has not chosen the best criminal lawyer either.

President: Is there anybody as the best criminal lawyer in the land?

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Mr. Nedumangad R. Kesavan Nair: I submitted my personal views. I am emphatically of opinion that the best criminal lawyer has not been selected. So far as sensation is concerned, if sensation was the criterion that prompted the Government in appointing the special prosecutor, Government has not been judicicus there also, or, there were other sensational cases in which special prosecutors were not appointed. I do not want to refer to instances. It does not create any local interest also. There is nothing in evidence to show that this special prosecutor could not be avoided and that the two Sirkar Vakils at Alleppey were incompetent or were not in a position to conduct the case properly nor any report from the Police Commissioner.

President: Is the honourable member aware whether there was any communication from the Police Commissioner or not?

Mr. Nedumangad R. Kesavan Nair: I want to know whether there was any such communication.

President: Whether a local prosecutor is the right man or the wrong man to conduct a case, what the report of the Commissioner of Police is to the Government, from the judge to the Government or from the High Court to the Government, these are matters, I may say with due deference to the privileges of this House, which can never be communicated to the members of this House.

Mr. Nedumangad R. Kesavan Nair: Sir, all that I was stating was that we should be convinced as to why the appointment was made, whether it was as a result of the communication from the Commissioner of Police or the Advocate General or whether it was done direct by the Government. A pretty large amount is set apart for the maintenance of the Sirkar Vakils and there is no reason why we should spend an additional amount in the matter of appointing special prosecutors. A provision of Rs, 4,000 has been made in the budget for fees and another Rs. 4,000 for other law charges. In the face of this, I do not think we would be justified in voting for this demand. This is a case in which the special prosecutor has not justified his choice and has not been loyal to the work that has been assigned to him nor has he conducted the case properly and the principle underlying the appointment has to be strongly condemned. In consideration of these things, I am of opinion that the demand has to be thrown out.

Mr. Kochikal P. Balakrishnan Tampi: I rise to support the demand. First of all I congratulate Mr. Kesavan Nair as a lawyer on his self-sacrifice on behalf of his clients because when speaking of this amount he was referring to it as fabulous.

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Mr. Nedumangad R. Kesavan Nair: Sir, I rise on a point of order. Is it proper for any member to indulge in such personal references about another member?

President: Mr. Tampi is entitled to make general observations but not personal.

Mr. Kochikal P. Balakrishnan Tampi: Even when they are complimentary?

President: No.

Mr. Kochikal P. Balakrishnan Tampi: As one who have had the good fortune to appear in that case, I may say that it was a very difficult one for the prosecution. I congratulate the special prosecutor who has handled the case in a very remarkable way. Several witnesses had to be examined, much evidence had to be waded through and it is quite unjust that the special prosecutor concerned stands condemned in this House, without being given an opportunity to defend himself here. This House is not aware of the state of evidence, information from the Police, what things had to be chosen and what to be rejected, in that case. Certainly I agree with my friend in believing that the practice of appointing special prosecutors is a little demoralising but not for the reasons advanced by the honourable member. As far as the particular special prosecutor is concerned, everyone in the legal profession knows that he is one of the foremost leading criminal lawyers in this country and I should congratulate the Government in getting his services on such a modest rate of Rs. 50 a day. Though it may be considered as enough to make the mouth water for junior lawyers I think it is a sacrifice on the part of a leading Vakil to have conducted this case on such a small fee. Certainly it does not enhance the prestige of this House to condemn a gentleman and attribute motives to him when he is not present to defend his case. Even if I consider that some of the questions put by him may be irrelevant, after all, is there any one lawyer who can say that every question that he puts is relevant? I would even go to the extent of saying that the eminence of the lawyer consists in putting irrelevant questions and getting them passed by the Judge. Some of the virtuous lawyers who write a lot of books and commentaries are never irrelevant in the sense that they have little practice. The special prosecutor in this case might have put a few irrelevant questions. Is it a reason to deny him the stipulated fee?

President: The House will now adjourn and meet again at 2 P. M.

The Council adjourned for lunch at 1 P. M. and reassembled at 2 P. M. with the President in the Chair.

MEMBER SWORN.

Mr. M. Govinda Pillai (*Principal Port Officer*) then took the oath and signed the rolls.

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Mr. Kochikal P. Balakrishnan Tampi: The services of the prosecutor have been engaged already on certain terms and he has to be paid lest he should sue the Government for his remuneration. That contingency, we must avoid. For that reason also I support the demand.

Before I close, I want to make it plain, that I did not want, that it was not my intention, to make any kind of disparaging statement about my friend Mr Kesavan Nair.

Mr. M. S. Anirudhan: I also oppose the motion. But I do it on principle.

There are two Sirkar Vakils at Alleppey and one of them—with my long experience of the Bar I can say—is a very eminent lawyer with extensive practice. I can speak with an amount of conviction that the special prosecutor in this case is not in any way better than that Sirkar Vakil at Alleppey. As such, the policy pursued by Government in this matter was not desirable at all. This policy is sure to have, as has been stated by Mr. Tampi, a demoralising effect on the Sirkar Vakils at Alleppey. Further, this policy gives room for favouritism and communal bias.

I therefore oppose the demand.

Mr. T. Mahomed Ismail (*Nominated*): Sir, a special prosecutor was appointed and he has done his duty to the best of his ability. He has to be paid ; Government is legally bound to do it. Therefore, I do not oppose the payment.

But, on principle, I must say that the appointment was not fair. Honestly, it was not fair to the Sirkar Vakils, from the top to the bottom. We have now been told that the correspondence on this matter, between the Government, the Police, the Head Sirkar Vakil, the other Sirkar Vakils and the judge at Alleppey, cannot be disclosed for the information of this House. From that we can infer that the policy underlying the appointment of special prosecutors is neither wholesome, nor in the interests of general administration and it questions the efficiency of the Sirkar Vakils. One point is however quite clear. A lawyer more competent than the available Sirkar Vakils was needed for the prosecution in this case.

There is another demand that is coming up, namely, the demand for the appointment of Government Pleaders under the new G. O. I dare say the object of the G. O. is to get more competent hands for conducting Government cases. We can therefore legitimately expect that hereafter there will be no need to appoint special prosecutors. Therefore, if the Government will now guarantee that, in future, especially in view of the appointment of Government Pleaders under the new G. O. Government will not appoint special prosecutors to conduct particular cases, the opposition, I hope, will withdraw. If, however, the Government is not prepared to give such an undertaking, it is my request that the present demand has to be thrown out.

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Mr. Kayalam Paramesvaran Pillai: Sir, the chief ground -at any rate one of the chief grounds—on which one item of the demand was opposed was a personal objection, more or less, relating to the special prosecutor that was appointed. I shall not deal at length with it. The charge levelled against him is that, during the examination of witnesses, he put certain questions which were considered irrelevant by the High Court. For the moment let us assume that the questions were really irrelevant, as that is the pronouncement by our highest Court. But, it will be readily conceded that in all such matters the worst that can be said is that it was an error of judgment on the part of the lawyer concerned. Otherwise, every Munsiff, every subordinate judge whose judgement is set aside by a higher court, every counsel whose arguments are repudiated by the judge, must be condemned as either inefficient or corrupt. Certainly, the House will not uphold such a view. The only question therefore is whether the prosecutor in this case did his duty properly and honestly. I am sure every lawyer will readily appreciate it. That point does not require any elaboration by me. The Alleppey riot case was a very complicated one ; there were many accused and various charges were levelled against them. The case required very careful handling. That was the reason why a special prosecutor was appointed. As the House will remember, the trial went on for about 4 months.

Mr. Nedumangad R. Kesavan Nair: Was any representation made to the Government that the case required handling by a special prosecutor ?

Mr. Kayalam Paramesvaran Pillai: On the assurance that no further questions of this nature will be asked, I would say ' Yes '.

President: I do not know whether the honourable member was entitled to give even that information.

Mr. Kayalam Paramesvaran Pillai: No word more shall I say on it, Sir. These matters are confidential and are not subjects fit for open discussion in this House.

As I said, Sir, the case has been conducted and the result, from the point of view of the prosecution, has been successful. It is therefore only fair that this House should grant the fee due to the prosecutor.

President: As I addressed the Assembly before putting the motion, and as the question of policy has been raised, I think it is my duty to elucidate the point.

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[President]

Honourable members are aware that Government have enunciated a new policy to be pursued in regard to the appointment of the Advocate-General and the Government Pleaders and that the present policy is that, for these appointments, leaders of the Bar should be chosen, and that no appointment should be made, to these posts, on the ground that the gentlemen applying for these appointments are really very deserving persons who have not had the good fortune to get good practice and that therefore some help should be rendered to them by the Government. Therefore, if in future this principle of choosing from amongst the leaders of the Bar for appointment as Advocate-General, Law Member or Government Pleader, not on a pensionable and whole-time basis but specifically for a term and on the retainer basis so that they may not forget their regular work and may keep themselves in full touch with their clientele and not degenerate into permanent civil servants, is borne in mind —as I trust it will be—there will be no occasion, normally, to go outside the ranks of Government Advocates for conducting even important cases. As a matter of fact, it is in order to obviate the necessity of such special appointments that the new rules have been formulated and laid down. I do not want it to be understood that, in giving this assurance, there may not arise exceptional cases in which there may be absolute necessity to have a special expert. I can give an instance where although there were the Advocate General and an array of legal talent available, an eminent lawyer was got down from outside to conduct the prosecution. There was the Meerut Conspiracy Case, the Cawnpore Conspiracy Case also, in which the U. P. Government got down an eminent lawyer from outside and paid him Rs. 7½ lakhs for conducting one particular case. I do not wish nor hope that we shall have the good fortune or the misfortune of having to conduct such cases here nor of bringing down such advocates from outside. We do not indulge in that kind of trial, nor will we, I trust, be put to the necessity of spending Rs. 7½ lakhs by way of fees to a single individual. All that I am saying is that, while there may arise exceptional cases in which we may have to go outside the ranks of the Government Pleaders, the whole idea of the new Rule is to see that local men who are able, who are competent and willing to conduct all manner of cases, are appointed on the retainer basis as Government Pleaders. It is with that object in view that the new rules have been brought into effect.

I trust, with that assurance, there will be no prospect of any division on this question. I would particularly deprecate division on such matters where the work has been actually done, and all that we are doing is to conduct a posthumus inquest.

The demand was put to vote and carried. The grant was made.

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